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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
13

14 PETER ENGLANDER)
15 Plaintiff,)
16 v.)
17 HOME MERIDIAN HOLDINGS, INC.; et)
18 al.)
19 Defendants.)

20 Case No. RG 13685328
21)
22)
23) Assigned for All Purposes to
24) Judge George C. Hernandez, Jr.,
25) Department 17
26)
27) **[PROPOSED] CONSENT JUDGMENT AS**
28) **TO DEFENDANT HOME MERIDIAN**
) **INTERNATIONAL, INC.**
)
) **(Health & Safety Code § 25249.6 et seq.**
) **Complaint Filed: June 26, 2013)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant Home Meridian International, Inc. (“Home Meridian”), with
5 Englander and Home Meridian collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

7 Englander is an individual residing in the State of California who seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Home Meridian**

11 Home Meridian employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Englander alleges that Home Meridian manufactured, imported, sold and/or
16 distributed for sale in California, products with foam cushioned components containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
22 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Englander alleges
23 that TDCPP escapes from foam padding, leading to human exposures.

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1 **1.5 Product Description**

2 The categories of products that are covered by this Consent Judgment as to Home Meridian
3 are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or
4 manufactured for use as a component of another product, such as upholstered furniture, but which is
5 not itself a finished product, is specifically excluded from the definition of Products and shall not be
6 identified by a Home Meridian on Exhibit A as a Product.

7 **1.6 Notices of Violation**

8 On March 27, 2013, Englander served Home Meridian Holdings, Inc., others and certain
9 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided
10 the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to
11 warn customers, consumers, and workers in California that the Products expose users to TDCPP.

12 On June 27, 2014, Englander served Home Meridian, Home Meridian Holdings, Inc., others
13 and certain requisite public enforcement agencies with a “Supplemental 60-Day Notice of Violation
14 (“Supplemental Notice”) that provided the recipients with notice of alleged violations of
15 Proposition 65 based on the alleged failure to warn customers, consumers, and workers in
16 California that the Products expose users to TDCPP. The Notice and Supplemental Notice shall
17 hereinafter collectively be referred to as the “Notices.”

18 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
19 prosecuting the allegations set forth in the Notices.

20 **1.7 Complaint**

21 On June 26, 2013, Englander filed a Complaint in the Superior Court in and for the County
22 of Alameda against Home Meridian Holdings, Inc., other defendants and Does 1 through 150, *Peter*
23 *Englander v. Home Meridian Holdings Inc., et al.*, Case No. RG 13685328, alleging violations of
24 Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained in the
25 Products (“Complaint”). Upon entry of this Consent Judgment, and provided no public enforcer
26 has elected to enforce the violations alleged in the Supplemental Notice, the Complaint shall be
27 deemed amended *nunc pro tunc* to include the violations alleged by Englander against Home
28 Meridian in the Supplemental Notice.

1 **1.8 No Admission**

2 Home Meridian denies the material factual and legal allegations contained in Englander’s
3 Notices and Complaint and maintains that all products that it has manufactured, imported,
4 distributed, and/or sold in California, including the Products, have been and are in compliance with
5 all laws. Nothing in this Consent Judgment shall be construed as an admission by Home Meridian
6 of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this
7 Consent Judgment constitute or be construed as an admission by Home Meridian of any fact,
8 finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or
9 otherwise affect Home Meridian’s obligations, responsibilities, and duties under this Consent
10 Judgment.

11 **1.9 Consent to Jurisdiction**

12 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over Home Meridian as to the allegations contained in the Complaint, that venue is
14 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
15 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
16 Procedure § 664.6.

17 **2. DEFINITIONS**

18 **2.1 California Customers**

19 “California Customer” shall mean any customer that Home Meridian reasonably
20 understands is located in California, has a California warehouse or distribution center, maintains a
21 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

22 **2.2 Detectable**

23 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent
24 of .0025%) of any one chemical in any material, component, or constituent of a
25 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
26 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
27 determine the presence, and measure the quantity, of TDCPP and/or tris(2-chloroethyl) phosphate
28 (“TCEP”) in a solid substance.

1 2.3 **Effective Date**

2 “Effective Date” shall mean September 1, 2014.

3 2.4 **Private Label Covered Products**

4 “Private Label Covered Products” means Products that bear a brand or trademark owned or
5 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of
6 California.

7 2.5 **Reformulated Products**

8 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
9 and TCEP.

10 2.6 **Reformulation Standard**

11 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
12 TDCPP and TCEP.

13 2.7 **Retailer**

14 “Retailer” means an individual or entity that offers a Product for retail sale to consumers in
15 the State of California.

16 **3. INJUNCTIVE RELIEF: REFORMULATION**

17 3.1 **Reformulation Commitment**

18 Commencing on November 15, 2014, Home Meridian shall not manufacture or import for
19 distribution or sale to California Customers, or cause to be manufactured or imported for
20 distribution or sale to California Customers, any Products that are not Reformulated Products.

21 3.2 **Vendor Notification/Certification**

22 On or before the Effective Date, Home Meridian shall provide written notice to all of its
23 then-current vendors of the Products that will be sold or offered for sale in California, or to
24 California Customers, instructing each such vendor to use reasonable efforts to provide only
25 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
26 preceding sentence, Home Meridian shall not employ statements that will encourage a vendor to
27 delay compliance with the Reformulation Standard. Home Meridian shall subsequently obtain
28 written certifications, no later than September 15, 2014, from such vendors, and any newly engaged

1 vendors, that the Products manufactured by such vendors are in compliance with the Reformulation
2 Standard. Certifications shall be held by Home Meridian for at least two years after their receipt
3 and shall be made available to Englander upon request.

4 **3.3 Products No Longer in a Home Meridian's Control**

5 No later than 30 days after the Effective Date, Home Meridian shall send a letter, electronic
6 or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer which it, after
7 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
8 and/or Supplemental Notice Home Meridian received from Englander ("Exemplar Product"); and
9 (2) any California Customer and/or Retailer that Home Meridian reasonably understands or believes
10 had any inventory for resale in California of Exemplar Products as of the relevant Notices' dates.
11 The Notification Letter shall advise the recipient that the Exemplar Product "contains TDCPP
12 and/or TCEP, chemicals known to the State of California to cause cancer," and request that the
13 recipient either: (a) label the Exemplar Products remaining in inventory for sale in California, or to
14 California Customers, pursuant to Section 3.5; or (b) return, at Home Meridian's sole expense, all
15 units of the Exemplar Product held for sale in California, or to California Customers, to Home
16 Meridian or a party Home Meridian has otherwise designated. The Notification Letter shall require
17 a response from the recipient within 20 days confirming whether the Exemplar Product will be
18 labeled or returned. Home Meridian shall maintain records of all correspondence or other
19 communications generated pursuant to this Section for two years after the Effective Date and shall
20 promptly produce copies of such records upon Englander's written request.

21 **3.4 Current Inventory**

22 Any Products in, or manufactured and en route to, Home Meridian's inventory as of or after
23 the Effective Date, that do not qualify as Reformulated Products and that Home Meridian has
24 reason to believe may be sold or distributed for sale in California, shall contain a clear and
25 reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.

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1 3.5 **Product Warnings**

2 3.5.1 **Product Labeling**

3 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
4 labeling, or directly on each Product. Each warning shall be prominently placed with such
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
6 to be read and understood by an ordinary individual under customary conditions before purchase.
7 Each warning shall be provided in a manner such that the consumer or user understands to which
8 specific Product the warning applies, so as to minimize the risk of consumer confusion.

9 A warning provided pursuant to this Consent Judgment shall state:

10 **WARNING:** This product contains TDCPP, a flame
11 retardant chemical known to the State
 of California to cause cancer.¹

12 Attached as Exhibit B are template warnings developed by Englander that are deemed to be
13 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
14 set forth in this Section are addressed, including as to the required warning statement and method of
15 transmission as set forth above, Home Meridian remains free not to utilize the template warnings.

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¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
20 used if Home Meridian had begun to use it, prior to the Effective Date. If Home Meridian seeks to
21 use alternative warning language, other than the language specified above or the safe harbor
22 warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the
23 warning, it must obtain the Court’s approval of its proposed alternative and provide all Parties and
24 the Office of the Attorney General with timely notice and the opportunity to comment or object
before the Court acts on the request. The Parties agree that the following warning language shall
not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant
to this Consent Judgment: (a) “cancer or birth defects or other reproductive harm” and (b) “cancer,
birth defects or other reproductive harm.”

25 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag
26 measuring 3” x 5”, with no less than 12 point font, with the warning language printed on each side
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
28 8.5” x. 11”, with no less that 32 point font, with the warning language printed on each side, which
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
yellow warning sticker measuring 3” x 3”, with no less than 12 point font, which shall be affixed
directly to the Product packaging.

1 3.5.2 **Internet Website Warning**

2 A warning shall be given in conjunction with the sale of the Products to California, or
3 California Customers, via the internet, which warning shall appear on one or more web pages
4 displayed to a purchaser during the checkout process. The following warning statement shall be
5 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
6 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.
7 The warning text shall be the same type size or larger than the Product description text:

8 **WARNING:** This product contains TDCPP, flame
9 retardant chemicals known to the State
 of California to cause cancer.³

10 3.6 **Alternatives to Interim Warnings**

11 The obligations of Home Meridian under Section 3.3 shall be relieved provided Home
12 Meridian certifies on or before September 1, 2014 that only Exemplar Products meeting the
13 Reformulation Standard will be offered for sale in California, or to California Customers for sale in
14 California, after September 15, 2014. The obligations of Home Meridian under Section 3.4 shall be
15 relieved provided Home Meridian certifies on or before September 1, 2014 that, after January 15,
16 2015, it will only distribute or cause to be distributed for sale in, or sell in, California, or to
17 California Customers for sale in California, Products (i.e., Products beyond the Exemplar Product)
18 meeting the Reformulation Standard. The certifications provided by this Section are material terms
19 and time is of the essence.

20 **4. MONETARY PAYMENTS**

21 4.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

22 In settlement of all the claims referred to in this Consent Judgment, Home Meridian shall
23 pay the civil penalties shown for it on Exhibit A in accordance with this Section.

24 Each penalty payment will be allocated in accordance with California Health & Safety Code
25 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
26 Health Hazard Assessment (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in
27 Trust for Englander.” Each penalty payment shall be made within two business days of the date it

28 ³ Footnote 1, *supra*, applies in this context as well.

1 is due and be delivered to the addresses listed in Section 4.5 below. Home Meridian shall be liable
2 for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
3 Section that are not received within two business days of the due date.

4 4.1.1 Initial Civil Penalty. On or before the Effective Date, Home Meridian shall
5 make an initial civil penalty payment. Home Meridian shall issue a check payable to
6 “McGuireWoods” in the amount identified on Exhibit A to be held in trust by the law office of
7 McGuireWoods for The Chanler Group. McGuireWoods shall provide The Chanler Group with
8 written confirmation within five days of receipt that the funds have been deposited in a trust
9 account. Within two business days of the date this Consent Judgment is approved by the Court,
10 McGuireWoods shall issue a check payable to “The Chanler Group” to the address found in Section
11 8 below.

12 4.1.2 Second Civil Penalty. On or before September 30, 2014, Home Meridian
13 shall make a second civil penalty payment in the amount identified on Exhibit A. The amount of
14 the second penalty may be reduced according to any penalty waiver Home Meridian is eligible for
15 under Sections 4.1.4(i) and 4.1.4(iii), below.

16 4.1.3 Third Civil Penalty. On or before January 30, 2015, Home Meridian shall
17 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
18 penalty may be reduced according to any penalty waiver Home Meridian is eligible for under
19 Sections 4.1.4(ii) and 4.1.4(iv), below.

20 4.1.4 Reductions to Civil Penalty Payment Amounts. Home Meridian may reduce
21 the amount of the second and/or third civil penalty payments identified on Exhibit A by providing
22 Englander with certification of certain efforts undertaken to reformulate their Products or limit the
23 ongoing sale of non-reformulated Products in California. The options to provide a written
24 certification in lieu of making a portion of Home Meridian’s civil penalty payment constitute
25 material terms of this Consent Judgment, and with regard to such terms, time is of the essence.
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1 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of Products Sold**
2 **or Offered for Sale in California.**

3 If Home Meridian so elects on Exhibit A, a portion of the second civil penalty shall be
4 waived, to the extent that Home Meridian has agreed that, as of September 1, 2014, and continuing
5 into the future, it shall only manufacture or import for distribution or sale to California Customers
6 or cause to be manufactured or imported for distribution or sale to California Customers,
7 Reformulated Products. If so elected, an officer or other authorized representative of Home
8 Meridian shall provide Englander with a written certification confirming compliance with such
9 conditions, which certification must be received by Englander’s counsel on or before September 15,
10 2014.

11 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

12 If Home Meridian so elects on Exhibit A, a portion of the third civil penalty shall be waived,
13 to the extent that Home Meridian has agreed that, as of November 15, 2014, and continuing into the
14 future, it shall only manufacture or import for distribution or sale in California or cause to be
15 manufactured or imported for distribution or sale in California, Reformulated Products which also
16 do not contain tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than
17 25 parts per million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent
18 of a subject product, when analyzed by a NVLAP- or California-accredited laboratory pursuant to
19 EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or
20 state agencies to determine the presence, and measure the quantity, of TDBPP in a solid substance.
21 If so elected, an officer or other authorized representative of Home Meridian shall provide
22 Englander with a written certification confirming compliance with such conditions, which
23 certification must be received by Englander’s counsel on or before January 15, 2015.

24 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
25 **Exemplar Products from the California Market.**

26 As shown Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
27 other authorized representative of Home Meridian provides Englander with written certification, by
28 September 15, 2014, confirming that each individual or establishment in California to which it

1 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar
2 Products held for sale in California.

3 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
4 **California of Unreformulated Inventory.**

5 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
6 other authorized representative of Home Meridian provides Englander with written certification, on
7 or before January 15, 2015, confirming that, as of October 15, 2014, it has and will continue to
8 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
9 Products.

10 **4.2 Representations**

11 Home Meridian represents that the sales data and other information concerning its size,
12 knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Englander was
13 truthful to its knowledge and a material factor upon which Englander has relied to determine the
14 amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent
15 Judgment. If, within nine months of the Effective Date, Englander discovers and presents to Home
16 Meridian, evidence demonstrating that the preceding representation and warranty was materially
17 inaccurate, then Home Meridian shall have 30 days to meet and confer regarding the Englander's
18 contention. Should this 30-day period pass without any such resolution between Englander and
19 Home Meridian, Englander shall be entitled to file a formal legal claim including, but not limited
20 to, a claim for damages for breach of contract.

21 Home Meridian further represents that in implementing the requirements set forth in
22 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
23 achieve reformulation of its Products and Additional Products on a nationwide basis and not
24 employ statements that will encourage a vendor to limit its compliance with the Reformulation
25 Standard to goods intended for sale to California Consumers.

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1 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
2 **Standard.**

3 If Englander provides notice and appropriate supporting information to Home Meridian that
4 levels of TDCPP, TCEP and/or TDBPP in excess of the Reformulation Standard have been detected
5 in one or more Products labeled or otherwise marked in an identifiable manner as manufactured or
6 imported after a deadline for meeting the Reformulation Standard has arisen for Home Meridian
7 under Sections 3.1 or 3.6 above, Home Meridian may elect to pay a stipulated penalty to relieve any
8 further potential liability under Proposition 65 or sanction under this Consent Judgment as to
9 Products sourced from the vendor in question.⁴ The stipulated penalty shall be \$1,500 if the
10 violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249
11 ppm, this being applicable for any amount in excess of the Reformulation Standards but under 250
12 ppm.⁵ Englander shall further be entitled to reimbursement of his associated expense in an amount
13 not to exceed \$5,000 regardless of the stipulated penalty level. Home Meridian under this Section
14 must provide notice and appropriate supporting information relating to the purchase (e.g. vendor
15 name and contact information including representative, purchase order, certification (if any)
16 received from vendor for the exemplar or subcategory of products), test results, and a letter from a
17 company representative or counsel attesting to the information provided, to Englander within 30
18 calendar days of receiving test results from Englander's counsel. Any violation levels at or above
19 250 ppm shall be subject to the full remedies provided pursuant to this Consent Judgment and at
20 law.

21 **4.4 Reimbursement of Fees and Costs**

22 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
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25 ⁴ This Section shall not be applicable where the vendor in question had previously been
26 found by Home Meridian to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
penalty for a second exceedance by Home Meridian's vendor at a level between 100 and 249 ppm
shall not be available after July 1, 2015.

28 ⁵ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 this fee reimbursement issue to be resolved after the material terms of the agreement had been
2 settled. Shortly after the other settlement terms had been finalized, Home Meridian expressed a
3 desire to resolve the fee and cost issue Home Meridian agrees to pay, Englander and his counsel
4 under general contract principles and the private attorney general doctrine codified at California
5 Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
6 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
7 Home Meridian's attention, negotiating a settlement in the public interest, and seeking court
8 approval of the same. In addition, the negotiated fee and cost figure expressly includes the
9 anticipated significant amount of time Englander's counsel will incur to monitor various provisions
10 in this agreement over the next two years, with the exception of additional fees that may be incurred
11 pursuant to Home Meridian's election in Section 11. Home Meridian more specifically agreed,
12 upon the Court's approval and entry of this Consent Judgment, to pay Englander's counsel the
13 amount of fees and costs indicated on Exhibit A. As of the Effective Date, Home Meridian shall
14 issue a check payable to "McGuireWoods" in the amount of fees and costs indicated on Exhibit A
15 to be held in trust by the law office of McGuireWoods for The Chanler Group. McGuireWoods
16 shall provide The Chanler Group with written confirmation within five days of receipt that the
17 funds have been deposited in a trust account. Within two business days of the date this Consent
18 Judgment is approved by the Court, McGuireWoods shall issue a check payable to "The Chanler
19 Group" to the address found in Section 8 below.

20 **4.5 Payment Procedures**

21 4.5.1 Issuance of Payments.

22 (a) All payments owed to Englander and his counsel, pursuant to
23 Sections 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one
3 of the following addresses, as appropriate:

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
17 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
18 in Section 4.5.1(a) above, as proof of payment to OEHHA.

19 4.5.3 Tax Documentation. Home Meridian shall issue a separate 1099 form for
20 each payment required by this Section to: (a) Peter Englander, whose address and tax
21 identification number shall be furnished upon request after this Consent Judgment has been
22 fully executed by the Parties; (b) OEHHA, who shall be identified as "California Office of
23 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be
24 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
25 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.5.1(a) above.

26 **5. CLAIMS COVERED AND RELEASED**

27 **5.1 Englander's Release of Proposition 65 Claims**

28 Englander, acting on his own behalf and in the public interest, release Home Meridian, its
parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
employees, attorneys, and each entity to whom Home Meridian directly or indirectly distribute or
sell Products, including, but not limited, to downstream distributors, wholesalers, customers,
retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all

1 claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to
2 TDCPP in the Products, as set forth in the Notices. Compliance with the terms of this Consent
3 Judgment constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the
4 Products, as set forth in the Notices. The Parties further understand and agree that this Section 5.1
5 release shall not extend upstream to any entities, other than Home Meridian, that manufactured the
6 Products or any component parts thereof, or any distributors or suppliers who sold the Products or
7 any component parts thereof to Home Meridian, except that entities upstream of Home Meridian
8 that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled
9 Covered Products offered for sale in California, or to California Customers, by the Retailer in
10 question.

11 **5.2 Englander's Individual Releases of Claims**

12 Englander, in his individual capacity only and *not* in his representative capacity, provides a
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
15 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,
16 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
17 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
18 delineated on a Exhibit A) manufactured, imported, distributed, or sold by Home Meridian prior to
19 the Effective Date.⁶ The Parties further understand and agree that this Section 5.2 release shall not
20 extend upstream to any entities that manufactured the Products or Additional Products, or any
21 component parts thereof, or any distributors or suppliers who sold the Products or Additional
22 Products, or any component parts thereof to Home Meridian, except that entities upstream of Home
23 Meridian that is a Retailer of a Private Labeled Covered (or Additional) Product shall be released as
24 to the Private Labeled Covered (or Additional) Products offered for sale in California by the
25 Retailer in question. Nothing in this Section affects Englander's right to commence or prosecute an

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28 ⁶ The injunctive relief requirements of Section 3 shall apply to Additional Products as
otherwise specified.

1 action under Proposition 65 against a Releasee that does not involve Home Meridian's Products or
2 Additional Products.

3 **5.3 Home Meridian's Release of Englander**

4 Home Meridian, on behalf of itself, its past and current agents, representatives, attorneys,
5 successors, and assignees, hereby waives any and all claims against Englander and his attorneys and
6 other representatives, for any and all actions taken or statements made (or those that could have
7 been taken or made) by Englander and his attorneys and other representatives, whether in the course
8 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
9 respect to the Products or Additional Products.

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
13 within one year after it has been fully executed by all Parties. If the Court does not approve the
14 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
15 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
16 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately
17 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
18 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,
19 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this
20 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any
21 monies that have been provided to OEHHA, Englander or his counsel pursuant to Section 3, above,
22 shall be refunded within 15 days of the appellate decision becoming final. If the Court does not
23 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
24 have been provided to OEHHA or held in trust for Englander or his counsel pursuant to Section 4,
25 above, shall be refunded to the Home Meridian within 15 days.

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California.
3 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
4 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
5 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
6 inapplicable by reason of law generally as to the Products, then Home Meridian may provide
7 written notice to Englander of any asserted change in the law, and shall have no further obligations
8 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
9 affected. Nothing in this Consent Judgment shall be interpreted to relieve Home Meridian from any
10 obligation to comply with any pertinent state or federal law or regulation.

11 **8. NOTICES**

12 Unless specified herein, all correspondence and notices required to be provided pursuant to
13 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
14 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the
15 other party at the following addresses:

16 To Home Meridian:

17 At the address shown on Exhibit A

To Englander:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

21 Any Party, from time to time, may specify in writing to the other Party a change of address to
22 which all notices and other communications shall be sent.

23 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute
26 one and the same document. A facsimile or pdf signature shall be as valid as the original.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

2 Englander and his attorneys agree to comply with the reporting form requirements
3 referenced in California Health & Safety Code section 25249.7(f).

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where Home Meridian has identified on Exhibit A
6 additional products that contain TDCPP and that are sold or offered for sale by it in California, or to
7 California Customers, (“Additional Products”), then by no later than January 14, 2015, Home
8 Meridian may provide Englander with additional information or representations necessary to enable
9 them to issue a 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to
10 Health & Safety Code section 25249.7, that includes the Additional Products. Polyurethane foam
11 that is supplied, shaped or manufactured for use as a component of a product, such as upholstered
12 furniture, is specifically excluded from the definition of Additional Products and shall not be
13 identified by Home Meridian on Exhibit A as an Additional Product. Except as agreed upon by
14 Englander, Home Meridian shall not include a product, as an Additional Product, that is the subject
15 of an existing 60-day notice issued by Englander or any other private enforcer at the time of
16 execution. After receipt of the required information, Englander agrees to issue a supplemental 60-
17 day notice in compliance with all statutory and regulatory requirements for the Additional Products.
18 Englander will, and in no event later than October 1, 2015, prepare and file an amendment to this
19 Consent Judgment to incorporate the Additional Products within the defined term “Products” and
20 serve a copy thereof and its supporting papers (including the basis for supplemental stipulated
21 penalties, if any) on the Office of the California Attorney General; upon the Court’s approval and
22 finding that the supplemental stipulated penalty amount, if any, is reasonable, the Additional
23 Products shall become subject to Section 5.1 in addition to Section 5.2. Home Meridian shall, at
24 the time it elects to utilize this Section and tenders the additional information or representations
25 regarding the Additional Products to Englander, tender to The Chanler Group’s trust account an
26 amount not to exceed \$8,750 as stipulated penalties and attorneys’ fees and costs incurred by
27 Englander in issuing the new notice and engaging in other reasonably related activities, which may
28 be released from the trust as awarded by the Court upon Englander’s application. Any fee award

1 associated with the modification of the Consent Judgment to include Additional Products shall not
2 offset any associated supplemental penalty award, if any. (Any tendered funds remaining in the
3 trust thereafter shall be refunded to Home Meridian within 15 days). Such payment shall be made
4 to "in trust for The Chanler Group" and delivered as per Section 4.5.1(a) above.

5 11.2 Englander and Home Meridian agree to support the entry of this agreement as a
6 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
7 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
8 noticed motion is required to obtain judicial approval of this Consent Judgment, which Englander
9 shall draft and file. If any third party objection to the noticed motion is filed, Englander and Home
10 Meridian shall work together to file a reply and appear at any hearing before the Court. This
11 provision is a material component of the Consent Judgment and shall be treated as such in the event
12 of a breach.

13 **12. MODIFICATION**

14 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
15 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
16 of any party and entry of a modified Consent Judgment by the Court.

17 **13. AUTHORIZATION**

18 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Parties and have read, understood, and agree to all of the terms and conditions of this
20 Consent Judgment.

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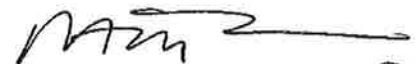
AGREED TO:


Plaintiff Peter Englander

Date: August 29, 2014

AGREED TO:

Settling Defendant:
Home Meridian International, Inc.

By: 
Name: DOUG TOWNSEND
Its: EV P.

Date: August 27, 2014

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EXHIBIT A

I. Name of Settling Defendant (Mandatory)

HOME MERIDIAN INTERNATIONAL, INC.

II. Names of Releasees (Optional; May be Partial)

III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

Padded Upholstered Chairs containing TDCPP

IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

Padded Upholstered Furniture containing TDCPP

V. Home Meridian's Required Settlement Payments

A. Penalties of \$67,000, as follows:

\$15,000 initial payment due on or before the Effective Date;

\$33,000 second payment due on or before September 30, 2014, of which \$18,500 may be waived pursuant to Section 4.1.4(i) and \$14,500 may be waived pursuant to Section 4.1.4(iii); and

\$19,000 third payment due on or before January 30, 2015, of which \$11,500 may be waived pursuant to Section 4.1.4(ii) and \$7,500 may be waived pursuant to Section 4.1.4(iv).

B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs attributable to Home Meridian: \$34,750.

VII. Person(s) to receive Notices pursuant to Section 8.

Dave Wisniewski

Name

Name

CFO

Title

Title

Address

Address

3980 Premier Dr

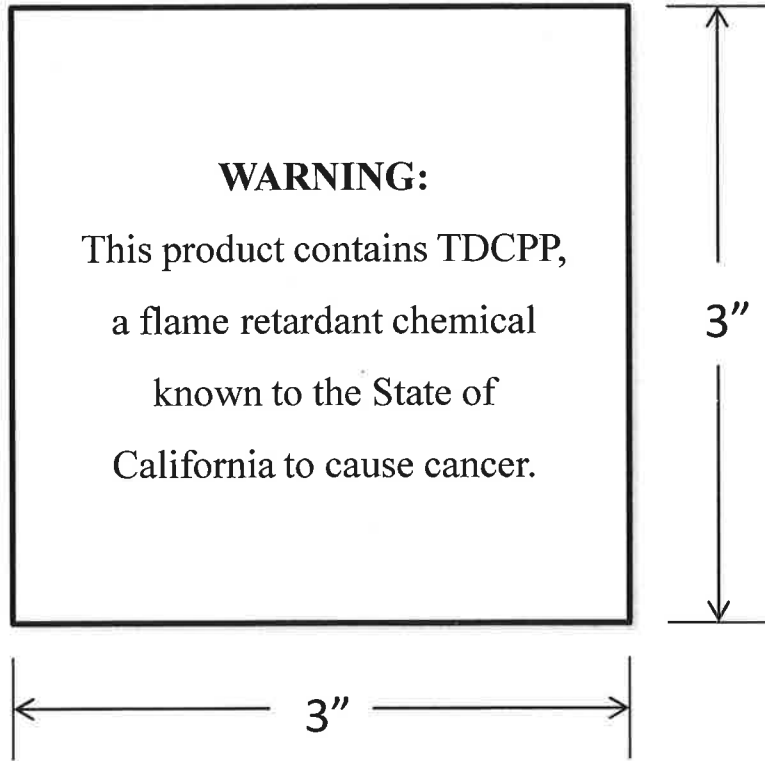
Suite 310

High Point NC

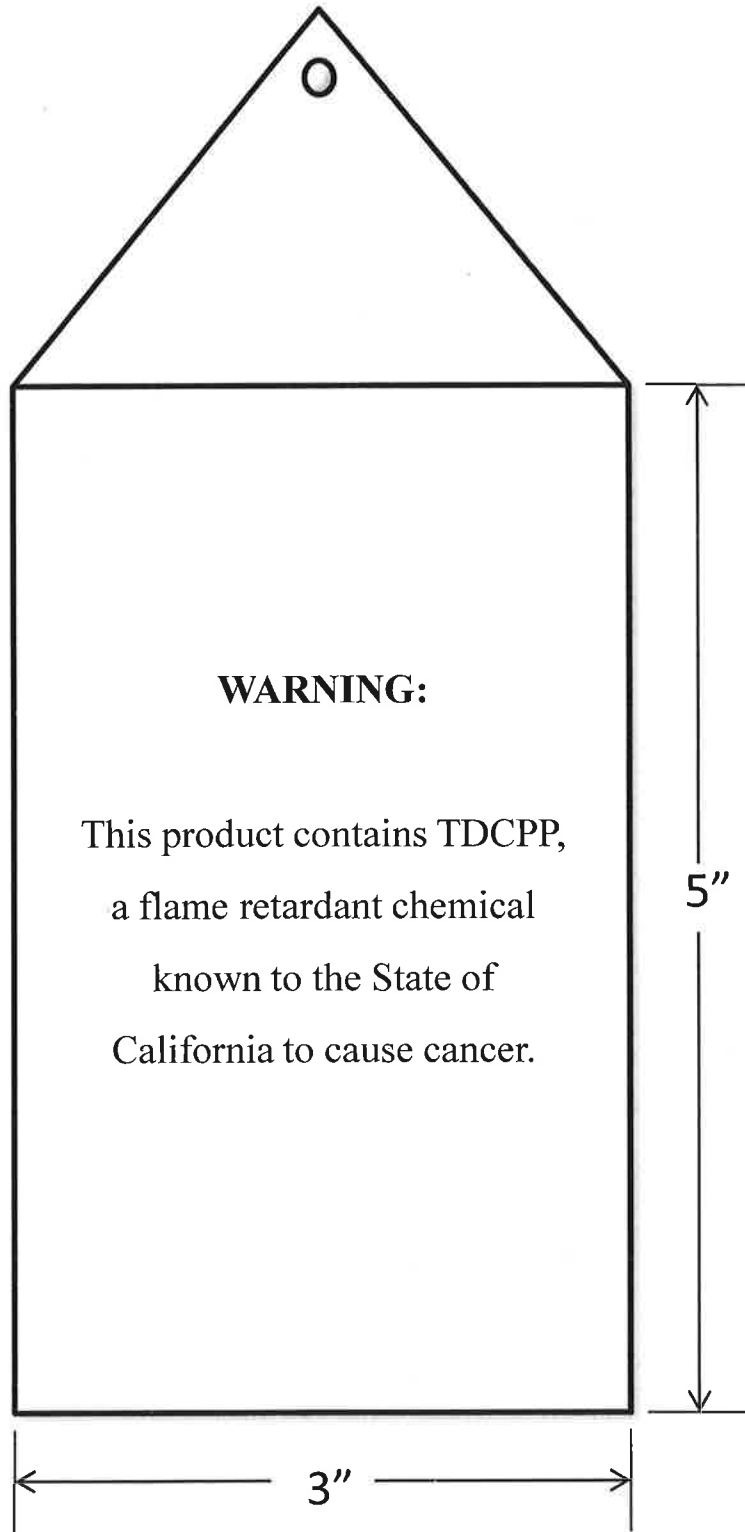
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EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.

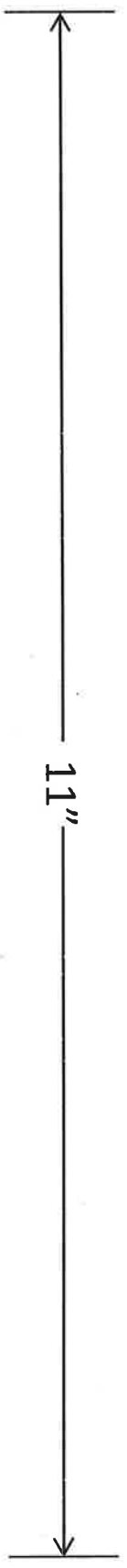


INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant 8.5"

chemical known to the State of California to
cause cancer.



INSTRUCTIONS: Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.